

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Wallingford Board of Education

Appearing on behalf of the Parent:

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Appearing on behalf of the Board:

Attorney Frederick L. Dorsey
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Appearing before:

Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Is the placement proposed by the Board, at Cook Hill School, appropriate to Student's special education needs in the least restrictive environment?
2. If not, should Student remain in her current placement at ACES Village School?

PROCEDURAL HISTORY:

This hearing was requested by a letter dated November 12, 2003, from Student's Parent. A Hearing Officer was appointed at that time. Subsequently, Parent retained an attorney and notified the Due Process Unit of her representation by letter dated November 25, 2003. The original Hearing Officer recused herself on January 19, 2004, and the current Hearing Officer was appointed on January 20, 2004.

On January 28, 2004, the Parent's Attorney filed a motion to consolidate this case with two other special education hearings, on the basis that all three cases involved students from the Board's district who were attending a program at ACES, and for whom a program within the Board's school had been proposed.

A pre-hearing conference was held on January 29, 2004. At that time, the final decision and order was due on February 13, 2004, and Parent's Attorney informed the Hearing Officer that her colleague, who would appear at the hearing, was not available until March 30, 2004.

In her February 2, 2004, memorandum concerning the January 29, 2004, pre-hearing conference, this Hearing Officer addressed regulatory issues concerning the scheduling of the hearing and concluded:

Rather than dismiss this matter for failure to prosecute within the timelines imposed by state and federal law, the hearing is scheduled for February 12, 2004, the latest date possible. The parties are expected to appear at that time, unless they have followed the requirements of Section 10-76h-9, R.C.S.A., to request a postponement. If they elect to request postponement, they MUST provide alternative dates.

The February 2, 2004, memorandum also included a response to Parent's Motion to Consolidate the three related cases. This Hearing Officer had consulted informally with the other two hearing officers assigned to the related cases, and they had agreed that consolidation was not appropriate. The motion to consolidate was denied.

Parent's Attorney responded on February 2, asking that the hearing be scheduled for March 30, 2004. On February 3, 2004, the Hearing Officer scheduled the hearing for March 30, 2004; extended the deadline for the final decision and order from February 13 to April 13, 2004; and issued procedural orders intended to encourage use of depositions to avoid duplicative testimony concerning the current program at ACES and the proposed program in the Board's school for the three related cases.

On February 12, 2004, the Hearing Officer scheduled two additional dates for the March 30 hearing, April 6 and 26, 2004, and extended the deadline for the final decision and order from April 13, 2004, to May 13, 2004. Also on February 12, 2004, the Parent's Attorney requested an order appointing an independent educational consultant, to evaluate the current program at ACES and the proposed program in the Board's school, and to "observe and possibly evaluate" the three children involved in the related cases. The Hearing Officer denied this request on February 23, 2004.

On March 11, 2004, Parent's Attorney informed the Hearing Officer that the parties had agreed to have an independent consultant to observe the children and the programs and write a report by April 30, 2004. A delay in the hearing was requested to accommodate this process. The parties did not provide an alternate date for the hearing. On March 11, 2004, the Hearing Officer postponed the hearing session scheduled for March 30 and April 6 and 26, 2004, to June 2, 2004, to provide for a Planning and Placement Team (PPT) meeting after receipt of the consultant's report and prior to the convening of the hearing. The Hearing Officer also extended the deadline for the final decision and order from May 13 to June 12, 2004.

By letter dated May 10, 2004, Parent's Attorney reported that a PPT meeting had been held on May 5, 2004, at which "the district did not present a program for next year". Parent's Attorney asked that the Hearing Officer order the district to hold a PPT meeting to develop a program for the next school year. The Board's Attorney responded on May 11, 2004, describing the PPT process as ongoing and moving that the hearing request be dismissed. The Parent's Attorney's May 13, 2004, response confirmed that the issue of the appropriateness of the 2003-2004 program and placement proposed by the Board was now moot, and suggested that the issues be modified to address the 2004-2005 school year. The Parent's Attorney also noted that Parent has the option of re-filing for 2004-2005 if the current matter was dismissed.

FINDINGS OF FACT:

1. This hearing was requested when the Board's PPT proposed moving Student from a program and placement at ACES to a program and placement within the Board's school district. (Letter requesting a hearing, November 12, 2003)
2. Because a hearing had been requested, the provisions of 34 C.F.R. § 300.514 and Section 10-76h-17, R.C.S.A., required that Student remained in her then-current placement at ACES pending the completion of the hearing.
3. The hearing has not convened, for a variety of reasons summarized above.
4. Although the PPT recently met, no Individualized Education Program (IEP) or placement for 2004-2005 has yet been offered by the PPT. Both parties agree that the issues of the appropriateness of the proposed 2003-2004 IEP and placement are now moot.

CONCLUSIONS OF LAW AND DISCUSSION:

1. Whether the reasons for the failure to convene the hearing in a timely fashion constitute failure to prosecute by an attorney or failure to firmly enforce timelines by a hearing officer, this dispute has become moot by the passage of the school year.
2. As provided by 34 C.F.R. 300.342, an IEP must be in place by the beginning of each school year.
3. There is no current issue in dispute between the parties.

FINAL DECISION AND ORDER:

Because there is no current issue in dispute between the parties, this matter is **DISMISSED** without prejudice.